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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,401	11/09/2001	Dov Ingman	158/02312	2137

7590

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EXAMINER

GEORGE, KONATA M

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 02/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/053,401

**Applicant(s)**

INGMAN, DOV

**Examiner**

Konata M. George

**Art Unit**

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) 29-52, 59-64 and 66 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 23 and 24 is/are rejected.
- 7) ☐ Claim(s) 5-22, 25-28, 53-58 and 65 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6, 11, 12</u> . | 6) <input type="checkbox"/> Other: ____.  |

### **DETAILED ACTION**

Claims 1-66 are pending in this application.

#### ***Information Disclosure Statement***

1. The information disclosure statements (IDS) submitted on November 9, 2001, June 30, 2003 and August 25, 2003 was noted and the submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner has considered the information disclosure statement.

#### ***Drawings***

2. The drawing(s) filed November 9, 2001 are approved by the Draftsperson under 37 CFR 1.184 or 1.152.

#### ***Election/Restrictions***

3. Applicant's election without traverse of Group I, claims 1-28, 53-58 and 65 in Paper No. 10 is acknowledged.

#### ***Disposition of Claims***

4. Examiner acknowledges the cancellation of claims 29-52, 59-64 and 66 as disclosed in the response to oral communication dated September 22, 2003.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider et al. (US 6,403,057 B1).

Schneider teaches a method of making microcapsules, which can comprise air or a gas (col. 3, lines 15-21). The microcapsules are prepared from biodegradable water-insoluble at room temperature solid lipids. The microcapsules can also contain biodegradable polymers, wherein up to 75% of polymer may be used in the microcapsules (col. 5, lines 24-27). The microcapsules are in the form of an oil-in-water emulsion (col. 2, lines 57-58) and wherein the water phase may contain an effective amount of a surfactant (col. 4, lines 34-35). The microcapsules have an average size between 0.1  $\mu\text{m}$  and 1000  $\mu\text{m}$  (col. 4, lines 28-20). Column 5, lines 5-16 teaches the use of redispersing agents to prevent particle agglomeration. The prior art does not teach the hydrophilic particles adjacent to the hydrophobic particles as claimed by applicant.

It is the position of the examiner that since the redispersing agent are being used to prevent agglomeration then they must have hydrophilic characteristics. These agents would then surround the particles so they would not agglomerate. It is also the position

Art Unit: 1616

of the examiner since column 5, lines 17-23 teach that the microcapsules can contain pores, then it would have been obvious to one of ordinary skill in the art at the time the invention was made to use redispersing agents in the form of particles as to keep the porosity of the microparticles intact.

### ***Allowable Subject Matter***

6. Claims 5-22, 25-28, 53-58 and 65 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

7. Claims 1-4, 23 and 24 stand rejected.

### ***Telephone Inquiries***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is (571) 272-0613. The examiner can normally be reached from 8AM to 5:30PM Monday to Thursday, and on alternate Fridays.

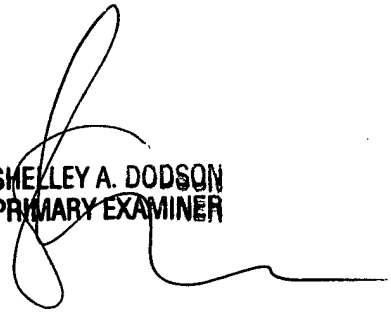
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached at (571) 272-0602. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and for After Final communications.

Application/Control Number: 10/053,401  
Art Unit: 1616

Page 5

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Konata M. George



SHELLEY A. DODSON  
PRIMARY EXAMINER